Supreme Court, U.S.
FILED
01-1367 DEC 31 2001
OFFICE OF THE CLERK

No. _____

In The
Supreme Court of The United States

Dan Barnett

Petitioner,

v.

Denver Publishing Company d/b/a
Rocky Mountain News, Inc.

Respondent.

On Petition For Writ of Certiorari
to the United States Supreme Court
Case from the Supreme Court of the State of Colorado
Case No. 01SC620
Case from the Appeals Court for the State of Colorado
Case No. 00CA0642
From the District Court, Arapahoe County
Case No. 99CV391

PETITION FOR AN EXTRAORDINARY WRIT OF CERTIORARI

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104PP

QUESTION PRESENTED FOR REVIEW

Whether the Supreme Court of the State of Colorado improvidently denied to hear the perfectly argued case, including a failure of duty of the State to issue a mandatory injunction, in reference to facts established by the Court of Appeals; thus denying basic human rights to the Petitioner?

JURISDICTION

The Supreme Court has jurisdiction under the following Sections of Federal Civil Procedure and Rules along with violations of the Federal Constitution as set forth in Exhibits 2 and 3: Section 1331 Federal Question, 1343 Civil Rights, 1361 Action to Compel an Officer or Agency of the United States to Perform His Duty, 1357 Injuries under Federal Law, and Rule 20 Where a Political Candidate has been Libeled and Immediate Action is Mandatory.

A BRIEF NATURE OF THE CASE

The Petitioner was running for State House District #37 in 1998. The Defendant wrote an article relying on rumor as a fact that the Petitioner has been convicted of a crime inferred as a fact established by the Opinion to the public a worse crime by criminal classification by

statute as an *extraordinary risk of violent harm to society*, which does not match that of the lowest classification of misdemeanor of the State as he was charged in 1995 in the most minimal argument. The Petitioner is a realtor by profession.

1. The Petitioner has been denied his rights as set forth in the Constitution of the State of Colorado by the Defendant and has been denied basic civil liberties. The Colorado court system has cheated the Petitioner out of victory at every turn to cover-up irregularities and illegal rulings of the court which will surely end in sanctions. The State of Colorado failed to issue an obvious injunction as properly set forth within pleadings. The Writ of Certiorari (Exhibit 2) and Reply in Support of the Writ of Certiorari (Exhibit 3) have enough evidence to prove the case of the Petitioner by matter of fact and

law of the Constitution of the State of Colorado and hold the jurisdiction of the United States Supreme Court within these exhibits with reference to the United States Constitution. The Petitioner has also filed suit against the State of Colorado for seven million dollars in regards to this matter for failing to follow the Constitution and issue the removal of the statement from the internet, obstructing justice, and as the ruling now stands with incorrect facts established by the Court of Appeals, wrongful imprisonment in Denver Federal Court Case #01-Z-2533, reassigned 01-D-2533 to Judge Wiley Y. Daniel, and currently reassigned 01-MK-2533 to Judge Marcia S. Krieger.

2. The Petitioner has never been charged with the crime the Court of Appeals labels as a matter of fact, nor has the Petitioner ever been charged at the same level of

crime under the State of Colorado by severity of crime classification. The Plaintiff's reputation was injured beyond facts. Please note the Opinion refers that the defendant in 1995 was almost charged with the crime the Defense refers. The Court of Appeals disturbingly ruled "almost charged" is the same as convicted. Furthermore, it is not possible to know for sure that the crime was not a felony as the date of conviction was omitted in the article. The defense never has legally checked out the file to which purported evidence came from until after the article was written. The Petitioner stands firm that the exhibits will prove the rights of the Petitioner were abused. The Court of Appeals left seven errors (A-G) that need review and correction. The Defendant refuses to remove the false conviction from the website and the State of Colorado failed to force the

removal and State law shows that Per Se Libel of a public official must be dealt with immediately and an injunction granted. The Petitioner has also ordered papers to run for United States Senate as a representative of Colorado in 2004 and has not ruled out a possible Presidential run in his lifetime. The Petitioner is currently an elected voting State delegate and a voting elected congressional delegate and has been invited the last three years to participate in the Governor's leadership program retreat. The Petitioner requests monetary damages as set forth within the original Complaint. The media is attempting to convict in the eyes of the community by collusion with the civil courts, a person of a crime bypassing the criminal courts. If such a crime as the Opinion refers as a matter of fact

would have occurred, surely such a charge would have been filed. This did not happen.

3. In conclusion, the Court of Appeals did not address numerous issues presented for review and the Supreme Court turned its back (Exhibit 1). The Petitioner requests justice to be served in accordance with the law. As it stands, the State wants the Petitioner to pay court costs for the courts errors and the guilt of Denver Publishing Company d/b/a Rocky Mountain News Inc. Without a corrected ruling the Petitioner could never refute a false conviction of a crime the Court of Appeals identified as a fact. The State cannot have it both ways. An injunction is mandatory. A lower crime can never be fabricated into a higher crime of 2 classifications + a sentence enhancer without being first charged with such a crime in the most minimal argument. That process

would have occurred in a criminal court with Miranda warning but the the Petitioner was never even charged with that crime. The Petitioner also wants the published "Non-Published" Opinion removed from the internet as seven errors remain and it infers a worse crime. It is an outrageous perversion of justice. The petitioner in reference to Rule 43 in regards to *extraordinary* circumstances, requests damages to be doubled against the appellant.

Respectfully submitted,
Dan Barnett
Pro Se

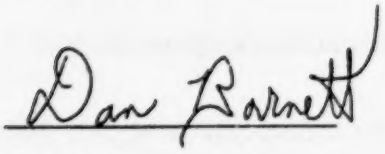

EXHIBIT 1

SUPREME COURT, STATE OF COLORADO
TWO EAST 14TH AVENUE CASE NO. 01SC620
DENVER, COLORADO 80203

CERTIORARI TO THE COURT OF APPEALS,
00CA642
DISTRICT COURT, ARAPAHOE COUNTY,
99CV391

Petitioner:

DAN BARNETT,

v.

Respondent:

DENVER PUBLISHING COMPANY, d/b/a
ROCKY MOUNTAIN NEWS, INC.

ORDER OF COURT

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals, and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS THIS DAY ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, DECEMBER 17, 2001.

[COURT STAMP]

cc:

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Marc D. Flink
Baker & Hostetler, LLP
303 E. 17th Ave., Ste. 1100
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Clerk of Court
Court of Appeals

Honorable Timothy L. Fasing
Arapahoe County District Court
7325 South Potomac Street
Englewood, CO 80112

Clerk of District Court
Arapahoe County District Court
7325 South Potomac Street
Englewood, CO 80112

[COURT STAMP]

EXHIBIT 2

SUPREME COURT, STATE OF COLORADO

2 East 14th Avenue
Denver, CO 80203

On Certiorari to the Court of Appeals
Case of Appeals Case No. 00CA0642

DAN BARNETT,

Petitioner,

v.

DENVER PUBLISHING COMPANY d/b/a ROCKY MOUNTAIN NEWS INC.

Respondent

Case No.:

01SC620

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PETITION FOR WRIT OF CERTIORARI

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B. The Court of Appeals erred in not remanding the case to be set for trial again because the court overlooked the fact the burden placed upon the Petitioner had satisfied the elements of proper relief. **C.J.I. 22:17, Rule 8** 5

C. The Court of Appeals violated the Constitution as set forth in the Amendment to the Petition for Rehearing, (***Colorado Constitution Art. 2***, Section 10, 2000), because a jury trial was not entitled by law 6

D. Considering the Motion for Dismissal was improvidently granted, did the Court of Appeals not properly consider Plaintiff-Appellant's Motion For Summary Judgment and issue Partial Summary Judgment on the lower liability of the false conviction and remand for the higher level of community belief the Complaint properly addressed ,within the community in regards to the Complaint in District Court, Case 99CV391 or in the alternative should have directed the lower court to re-address the issue of Summary Judgment, **Rule 57** 8

E. The Court of Appeals did not address a change of venue request 9

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Appendices:

I. **Appendix 1**, is Appendix B in the Opening Brief of Plaintiff-Appeal in the Court of Appeals showing the case had already been scheduled for a (2) day trial for October 2000. Plaintiff had been working towards preparations for the Trial Status Conference scheduled for 10 AM. September 22,
2000.

II. **Appendix 2**, Colorado Court of Appeals decision of April 26, 2001.

III. **Appendix 3**, Order Denying Petition for Rehearing, August 16, 2001 roughly 110 days after the decision by the Court of Appeals.

IV. **Appendix 4**, Directions for the clerk to contact the Attorney General regarding a Constitutional violation. **Rule 44** Page 1571.

V **Appendix 5**, Declarations of basic human rights and relevant United States Amendments.

> ***U.S. Constitution Amendment*** XIV (1868) Section 1
>
> ***U.S. Constitution Amendment*** VI (1791)
>
> ***United Nations Universal Declaration of Human Rights*** Article 11 Part 2, and Article 10

CASES CITED

Abrahamsen v. Mountain Tel. And Tel. Co.., 177 Colo. 422, 494 P.2d 1287 (1972) 9

Left Hand Ditch Co. v. Hill , 933 P. 2d 1 (Colo. 1997) 7

Fluid Technology, Inc. v. CVJ Axles, Inc., 964 P.2d 614 (Colo. App. 1998) 4, 9

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Lewis v. McGraw-Hill Broadcasting Co., 832 P.2d 1118 (Colo. App. 1992) 11

Lane v. Arkansas Valley Publishing Co., 675 P. 2d 747, 750 (Colo. App. 1983) 5

Simonson v. United Press International, Inc., 654 F. 2d 478 (7th Cir. 1981) 6

Macleod v. Miller, 44 Colo. App. 313 , 612 P.2d 1158 (1980) 3

Read v. Phoenix Newspaper, Inc. 819 P2d 939 (Ariz. 1991) 6

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STATUTES AND OTHER AUTHORITIES

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C.J.I. (2d ed.)3:2 ..... 1, 12

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C.R.S. Rule 8 ..... 3, 4

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C.R.S. Rule 45 9

Colorado's (Second) Restatement of Torts 581 A(1977)7

Colorado Constitution Art. 2, Section 10, (2000) 6

U.S. Constitutional Amendment 1 ..... 3, 5, 10

[p. 2]

II. REFERENCE TO REPORTS

This Petition for *Certiorari* concerns the decision of the Court of Appeals Case No. 00CA0 642 from Arapahoe County District Court Case No. 99 CV 391 with the most Honorable Gerald J. Rafferty presiding as of 1-5-2000, until switched without notice or consent to Honorable Timothy L. Fasing.

[p. 2]

III. GROUNDS FOR JURISDICTION

C.R.S. Rule 49 P.1573 gives grounds for Supreme Court review for the following reasons.

A. Where the District or Superior Court has decided a question of substance not heretofore determined by this court as the Court of Appeals is attempting to circumvent the legislature and create new law in regards to criminal classification.

B. Where the Court of Appeals or District Court has decided a question of substance in a way probably not in accord with applicable decisions of the Supreme Court or the body of the legislature, or the Governor, or Federal Courts, or the United Nations.

C. Where the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings or so far sanctioned such procedure by a lower court as to call for the exercise of the Supreme Court's power of supervision. **Rule 53**

D. Where the Petitioner is currently an elected public figure as a State and Congressional Delegate to represent the views of his community and three years in a row invited to participate in the Colorado Republican Leadership retreat as an emerging leader and eventually a [p. 3] possible candidate to represent Colorado in

other capacities , and to hear this case is a matter of public concern ; and as an issue for other Statesmen in the foreseeable future , and without an injunction would open up to liability the State of Colorado for parasitic damages and to be enjoined as a Defendant at a Federal Court level for failing to follow the Constitution of Colorado and the United States, and issue an injunction, by allowing for a human rights violation to continue. Walton v. State 968 P. 2d 636 (Colo. 1998). The injunction should have been immediate at the time the Court of Appeals ascertained the crime in the Opinion as a (matter of fact) with a crime difference acknowledgment. Macleod v. Miller, 44 Colo. App. 313, 612 P.2d 1158 (1980).

E. Petitioner was denied due process as outlined within Opening Arguments by the Plaintiff-Appellant. **Rule 97**.

F. **Rule 44** Page 1571 (See Appendix 4 for clerk instructions)

G. ***U.S.C.A. Amendment 1***. The Public has a right to know the facts and not the "Almost facts."

[p. 3]

IV. STATEMENT OF THE CASE

1. The Petitioner won this case prima facie on the merits and The Court of Appeals overlooked, or misapprehended the facts. The fact that that crime of which the Opinion labeled the conviction is not sufficient to overcome the Defense's plead strategy of "failure to state a claim upon which relief can be granted." **Rule 8** The Defense never showed such a conviction that the Court of Appeals labeled as a (matter of fact), and denied the Petitioner basic human rights. The District Court judge in a minimal liability argument must have not looked at C.R.S. 18-9-111 (5A) (1995) . There are two additional elements. (1) A threat as to make a reasonable person to be in fear for the person's life, and (2) threat repeated on more than one occasion.
[p. 4] The Court of Appeals just ignored this information.

2. The Petitioner could have won the election he was running for if the reporter had correctly labeled and dated the correct 1995 crime as to which the Defense refers to as a worse crime. It was unfair, and the damage can never be completely undone. The Plaintiff was running for office in 1998 and the Defense accused the Plaintiff of being convicted of a crime without a time frame element, essentially by reporter, editor, attorneys, and civil court bypassing criminal court.

The court must accept all facts pled in the complaint as true. This was not done. Opening Brief of Plaintiff-Appellant (Page 8) shows that **"the Relief to the defense should be granted if the defense can prove that information used to write the article came from a reliable legal source and not something like tarnished, political hearsay." Rule 8**, in which the Court of Appeals labeled as a (matter of fact). Fluid Technology, Inc. v. CVJ Axles, Inc., 964 P.2d 614 (Colo. App. 1998) was not properly used as a guide by the Court of Appeals. A jury trial was necessary to establish liability, and recklessness, and damage award calculations. The burden is on the Defendant to prove the conviction is true. Gomba v. McLaughlin, 180 Colo. 232, 504 P.2d 337 (1972). This was not done. It was not true and impossible to be substantially true as legally incongruent. The Plaintiff-Appellant has never been convicted with this crime, nor charged with it. The Appeals Court did not show proper respect to the fact that the Defense failed to show cause for a disqualification on the merits alone. The statement is false as a (matter of fact) and not opinion as stated by the Court of Appeals. **C.J.I. 22:14**. It has caused him to be feared and "shunned" by society with dozens of witnesses to testify to the depth of the damage to that effect. Miles v. Ramsey, 31 F. Supp. 2d 869(D. Colo. 1998).

[p. 5]

V. ARGUMENT

A. The Court of Appeals erred in not granting an injunction to remove the false conviction from the Internet and has allowed for a perpetuation of a human rights violation in which the State of Colorado will be enjoined as a Defendant at the Federal level if the major offensive problem is not corrected by the Supreme Court.

The Opinion agrees that recklessness was satisfactorily established. Heller v. Bianco 244 P. 2d 757 (Cal. App. 1953) is a landmark ruling for liability and internet retractions. The Court of Appeals has also asserted erroneously that relief cannot be met with regards to a felony as witnesses believe, in the elevated liability scenario in District Court , Case 99CV391 as properly incorporated in the Appeal , by exact wording of the Complaint . Either way a 3rd degree misdemeanor never matches a 1st degree misdemeanor + (a sentence enhancer) for a public fear element, or that of a felony. Thus, the Court of Appeals erred in never issuing obvious injunctive relief and misapplied Brooks v. Jackson, 813 P 2d 847 (Colo. App. 1991) in regards to damage awards and should have rather focused on **Rule 57 (F)** . The Supreme Court has no choice but to administrarily issue an injunction. The Petitioner is just asking for a fair and accurate re-written statement in the place of the incorrect statement. The findings of Lane v. Arkansas Valley Publishing Co., 675 P. 2d 747, 750

(Colo. App. 1983) of open debate and the ***1st Amendment*** rights are not legally diminished in any way and is not an effective defense for not rewriting the statement with a proper time frame. The truth is always the best remedy. It shouldn't take more than five minutes by the Defense's computer expert.

B. The Court of Appeals erred in not remanding the case to be set again for trial because the court overlooked the fact the burden placed upon the Petitioner had satisfied the elements of proper relief. C.J.I. 22:17.

Colorado Criminal Code Title 18 The Defense did not show any crime which the Court of **[p. 6]** Appeals ruled was at least 2 classifications of crime higher + (a sentence enhancer) by law with additional classification as an **extraordinary risk of harm to society** (Page 5, last paragraph.) which involves the additional elements of a threat as to cause one to fear for life and a repeated threat. The Defense has never shown that 1st degree misdemeanor or worse. The judgment must be modified and Partial Summary judgment should be granted Lockett v. Garrett, 1 P. 3d 206 (Colo. App. 1999), or be remanded for trial for further proceedings as to the greater level of damage ignored by the Court of Appeals to be shown with witnesses under sworn testimony that will not agree to, but something much different and more serious. This will be shown in trial.

The Defense never successfully showed such a conviction, because there isn't one, nor is there one that is similar or even close by severity by crime level.

C. The Court of Appeals violated the constitution as set forth in the Amendment to the Petition for Rehearing, (Art. 2 Section 10, 2000,) because a jury trial was not entitled.

The Court of Appeals erred in not reversing the Trial Court, by violating the ***Colorado Constitution*** (Art. 2, Section 10 ,2000) "In all suits and prosecutions for libel the truth thereof may be given in evidence, and the JURY, under the direction of the court shall determine the law and the fact. Churchey v. Coors Company 759 P. 2d 1336 (Colo. App. 1988)

1. Read v. Phoenix Newspaper, Inc. 819 P2d 939 (Ariz. 1991) was incorrectly applied by the Court of Appeals in their logic because in 1974 in the State of Arizona there was only one classification of misdemeanor. Thus, both crimes in that case were exactly the same level and effective as support of equality, but entirely different and irrelevant to the case before you today. They were the *exact* same level.
2. Simonson v. United Press International, Inc., 654 F. 2d 478 (7th Cir. 1981) The court summarizes that the dispatch was in no manner made false by substituting the

word for the exact legalism. In 1977 Wisconsin law notes that "rape" is also considered 2nd degree sexual **[p. 7]** assault. "Sexual contact or sexual intercourse with another without consent of that person by the use of threat or force. The youth pled guilty to second degree sexual assault. As anyone can see rape is exactly second degree assault by Wisconsin Statute. The crimes are *exact* legalisms. This is entirely different than the case of the Petitioner, pleading here today. Furthermore, the Wisconsin Court ruled the statement needs to be both defamatory and false. Defamation by criminal label is actionable Libel Per Se. There has never been a crime the Court of Appeals refers , or in other words the conviction was factually false. The higher crime can never be misapprehended by any intelligent person of the lower crime. By statute it is legally impossible._

Therefore, the Court of Appeals misapplied case law and the Defense has never shown by Exhibit or otherwise that a 1st degree misdemeanor as referred to in the Opinion has been committed. It is not true. **C.J.I. 22:14**. The Court of Appeals cited Smiley's Too, Inc. v. Denver Post Corp. 935 . 2d 39 (Colo. App. 1996) which contradicts the Court of Appeals Opinion (matter of fact) label by statute. The Court of Appeals should have

rather relied upon Colorado's (Second) Restatement of Torts 581 A(1977) which states liability for defamation should be granted if false. If this would have been done Left Hand Ditch Co. v. Hill , 933 P. 2d 1 (Colo. 1997) would have actually supported the Plaintiff. (1.)The statement is false and is a (matter of fact).(2) The Petitioner has never been conviction of the crime the Court of Appeals ruled it was (Page 5, last paragraph.)
2. The briefs satisfied the Court of Appeals which ruled in the Opinion (Page 5 Line1, 2) that recklessness was adequately formed within the complaint. It was an unprivileged publication to write that the Plaintiff was convicted of something he has never even been charged. The Petitioner never asked for the sealed court files because an accurate description can be made without recklessly making it appear as much worse crime as the Defense did.
3.The obvious existence of harm to reputation by false criminal label to the Plaintiff what the labeled statutes as a an
extraordinary harm to society, carrying a much greater "sting".

[p. 8]

D. Considering the Motion for Dismissal was improvidently granted, the Court of Appeals did not properly consider Plaintiff's Summary Judgment and issue Partial Summary judgment on the lower liability of the false conviction and remand for the higher level of community belief the complaint

properly addressed as a belief within the community in regards to the complaint of District Court Case 99CV391 or in the alternative should have directed the lower court to re-address the issue of Summary Judgment . Rule 57

The Petitioner requests the Supreme Court to consider re-pleading at the District Court level with the Plaintiff knowing who the Judge is and being afforded the Constitutional opportunity to dismiss the judge, **Rule 21** as was incorporated into the Appeal (Page 4). Or, in the alternative should consider Partial Summary Judgment with directions to prove additional liability, or if the court is not comfortable issuing Partial Summary Judgment to remand as the case as presently encapsulated for trial on all issues with an order to re-examine at the lower court for Summary Judgment . In regards to Colorado law of libel four conditions must be met. (1) A defamatory statement, (2) Published to a third party, (3) fault amounting to negligence, (4) actionability . (5) And additionally, Public officers also must show reckless disregard to truth or falsity. The Petitioner established (1) The statement was false within these pleadings today and within both lower courts. (2) It was published. (3) It was established as reckless by the Court of Appeals as properly plead. It is Per Se which is automatically actionable as a (matter of fact). Partial Summary Judgment with respect to **Rule 57** (F) and prompt resolution by Summary Judgment of defamation actions is appropriate. Lockett v. Garrett, *supra*. The

Petitioner requests Partial Summary Judgment on (1),(2)and (4), and requests pleadings begin on negligence and recklessness as all other elements are established facts. Since the Court of Appeals decided that the criminal charge was a fact and not an opinion as argued by the Defense, this only leaves two elements for the jury . (1) (Liability) How the Defendant wrote the article without verifying **[p. 9]** anything by hearsay , or how the Defendant had over (17) reasons why the Defendant should have had serious doubts. (2) And if this action was (Recklessness with disregard to truth or falsity) which is further compounded by failing to remove the false (matter of fact) statement as established by the Court of Appeals. If the Defense does not respond to these set upon facts established by the Court of Appeals , the Supreme
Court should automatically granted Partial Summary Judgment Abrahamsen v. Mountain Tel. And Tel.Co. 177 Colo. 422, 494 P.2d 1287 (1972) to eliminate time and expense of factual pleadings.

[p. 9]

E. The Court of Appeals did not address a change of venue request

The Appellee requested the case be moved to any other county besides Arapahoe County. **Rule 21** (Page 4, last two lines) Opening brief of Plaintiff-Appellant and the Petitioner requests remand into any other county other than where the House District the Plaintiff was running

for was located , and lower court and the Court of Appeals have shown cause with Constitutional violations established within these briefs for such appropriate action.

[p. 9]

CONCLUSION

Fluid Technology, Inc. v. CVJ Axles, Inc., *supra*, does not support the decision of the Court of Appeals because it ignored statements in the Complaint entirely, and they must consider everything as true. Witnesses that definitely will be subpoenaed to testify that there is a belief that a felony conviction occurred roughly 1,034 days after the Defense's purported "almost" conviction were shown within the body of the Complaint in Case 99 CV 391 in Arapahoe County District Court. **Rule 45**.

1. Witness #1 John Emery (303) 947-2721
   Real Estate Broker/Owner
   8333 W. Crestline Ave Littleton Co.
   80120

[p. 10]

2. Witness # 2 Betty Wotring (303) 734-4567 Centennial City Council
   Aurora Co. 80120
3. Witness #3 Martha Kreutz (303) 741-4681 6023 S. Bellaire Way Littleton, Colorado 80121

With prima facie evidence with Witnesses 1, 2, and 3 as samples with roughly 85 other respected citizens within the body of the complaint, whom will not belief what the Court of Appeals is saying that they believe. They

have never been deposed as requested by the Defense as the trial was still months away. The Court of Appeals cannot possibly know the truth . Furthermore , with near certainty *every* ruling State Senator and State Representative will not agree with the ruling of the Court of Appeals, nor the District Court and all work very hard to create laws for the judiciary to recognize and follow. The Defendant's ***1st Amendment*** rights are not being diminished in any capacity because they can label it any way they see fit as long as it is equal to 3rd degree misdemeanor and not something much higher and worse as was done. The file is currently open for a full and robust debate as are any and all other means of collecting information on convictions. The Petitioner is just requesting the Defense write it in a legal and fair way. The Court of Appeals (Page 5) erred in applying the standard of "Almost" instead of "fact" for the one and only Exhibit entered by the Defense in Case 99 CV 391 and did not address that the so called evidence presented by the Defense was never looked at before the article was written as stated in the body of the Complaint of Case 99 CV 391, that can be proven at jury trial if necessary. "Almost" shown within these pleadings is insufficient as a "matter of fact and law." The "Almost" proof is the only evidence ever entered at any time by the Defense and is not sufficient . Findings of Lockett v. Garrett, *supra*, surround "disregard to truth or falsity" and was a question for the jury for this heightened burden of being a public figure. It is also inadmissible after proven at trial that it was not used to write the article , although not necessary to show

recklessness. The purported evidence shows the date of a different conviction (8) times, the Statute of Conviction (3) times, and the level of crime more than (6) times, but it
[p. 11] was rather dug up afterwards by their attorneys. These (17) reasons, would support findings of Lewis v. McGraw-Hill Broadcasting Co., 832 P.2d 1118 (Colo. App. 1992) of "probable falsity" and was a question for the jury to decide. In either scenario, reckless disregard for the truth is exchangeable wording for malice with the additional burden of proof as justification for punitive damages by Colorado law, Bolduc v. Bailey, 586 F Supp. 896 (D. Colo. 1984). In regards to the Court of Appeals claim of both crimes being unwanted behavior , I don't of any crime that is wanted and that is why it is a crime . The Court of Appeals showed no legal jurisdiction or case for this statement and deserves to be sanctioned for failing to issue the injunction. It is cruel and unusual. Without this corrected ruling the Petitioner would be unable to refute an incorrect and much worse crime. It is wrong , and herein was proven to be an incorrect ruling. Others reporters in the future will wonder what happened to such a conviction since they cannot find such a conviction or will they just look at the website as a matter of false truth and perhaps publish again if not removed. The appeals ruling was very unhealthy for civil rights. The failure of the courts to not act immediately on the injunction sets a disturbing and dangerous precedence with a slow erosion of human rights . This case when ruled upon by the Supreme Court will issue new legal precedence as to retractions

as this Libel case is unlike any other ever heard in this county, as being a different level of crime even in the minimum liability argument. It is entirely false. It is correctable. A higher crime by label of this and other sorts never can be lowered by label by any reasonable person. It is much worse and the Petitioner is sure any jury would easily agree. There are two additional necessary elements of difference for such a conviction.

The Petitioner/Appellant and Cross-Appellee/ Plaintiff has won this case as the laws under the State of Colorado within briefs at both the District Court level and in the Court of Appeals, with prima facie evidence. The Petitioner has rock solid (matter of fact) witnesses that were never **[p. 12]** addressed for additional liability. The Petitioner also requests an additional $300 for filing in the Court of Appeals and the Supreme Court and accrued interest to cover this time frame as well. The Petitioner has no legal training and has only studied the law to clear his name of this horrid and offensive criminal label and therefore, cannot ask for attorney fees. The Supreme Court should also order the Defense to promulgate to all media outlets that an injunction was issued so as to help stop foreseeable future damages. Venit et dicit; Victory in regards to the injunction belongs to the Petitioner by law. The Supreme Court should hear this case as an issue of public concern and modify the Judgment of the Court of Appeals. A jury should be summoned with regards to recklessness and liability with further proceedings to determine award amount due to the Plaintiff with interest calculations. It

should be noted as well the Defense did not appeal the Amendment to the Complaint is Case 99CV 391, if the Supreme Court decides to entertain Summary Judgment in entirety Lucas v. District Court,140 Colo. 510, 345 P 2d 1064 (1959). The Petitioner also requests oral argument **Rule 46.6.**

The Petitioner has no moral choice but to move forward with this Writ, as matter of law, fact, public concern, with Constitutional violations, and respectfully requests to Supreme Court to hear this case as a safety net for all Statesmen and women of the United States so that Barnett v. Denver Publishing Company d/b/a Denver Rocky Mountain News will be used as a means to prevent media abuse and as a question that should best addressed by the general assembly Walton v. State ,supra., and not the Judiciary by usurping the Constitution, as a battleground case for Internet injunctions, U.S. Criminal Code, and others wrongfully libeled.

Respectfully Submitted,

/s/ Dan Barnett

Dan Barnett, Pro Se

Appendix 1

DISTRICT COURT, COUNTY OF ARAPAHOE, STATE OF COLORADO

Case No. 99CV391 Division 5

Order Regarding Cases Set For Trial

Dan Barnett,

Plaintiff(s),

v.

Denver Publishing Company d/b/a Rocky Mountain News,

Defendant(s).

The party setting this matter for trial is hereby ordered to provide a copy of this order to all parties of record within five (5) days from the receipt of this order and to provide to the court a certificate of that service within ten (10) days.

(1) Trial Call/Trial Status Conference.

(1) For all jury trials and all court trials scheduled on a Monday (or a Tuesday following a Monday holiday), a mandatory Court appearance for trial counsel will bescheduled for 10:00 a.m. approximately

10 days before the first day of trial. This will be a trial status conference. The Trial Management Order shall be filed at least 20 days before this conference.

(2) Lead counsel and pro se litigants must appear for the trial status conference.

(3) On the Friday morning before the first day of trial, counsel for those trials remaining on the docket for the following week shall advise the Court by telephone as to whether their case remains ready to proceed to trial.

(2) Filing Deadlines.

(1) *Motions*. An original and a copy of all pre-trial motions, *together with forms of order and sufficient stamped self-addressed envelopes for all parties*, must be filed in accordance with C.R.C.P. 16 and shall be designated in the Trial Management Order pursuant to C.R.C.P. 16(c)(1)(III). Pursuant to C.R.C.P. 56(c) motions for summary judgment shall be filed not later than 75 days before trial and cross motions for summary judgment shall be filed not later than 60 days before trial. *Facsimile filings are not accepted unless pre-approved by the court. Facsimile filings greater than 10 pages will not be*

accepted. **Briefs shall not exceed 10 pages in length, exclusive of tables and appendices, without prior court approval.** No surreplies or supplemental responses shall be filed except to cite new, previously unpublished authority.

(2) *Court Settlement Conferences.* All requests for ADR services shall be referred to Multi Door Court Services at 303-649-6275.

(3) Experts.

(1) All cases are subject to the expert witness provision of C.R.C.P. 16(b)(1)(II)(B) and (c)(1)(VI) and C.R.C.P. 26(a)(2) and (a)(4).

(2) In all cases, reports or summaries of expert witness' testimony must be provided for all experts in a manner consistent with C.R.C.P. 26(a)(2).

(4) Attorneys shall confer with each other. Pursuant to the provisions of C.R.C.P. 16 and C.R.C.P. 121 § 1-12 (1) and (5) § 1-15 (8) and 37(a)(2)(A), counsel shall confer in good faith prior to the filing of motions, taking of depositions, making requests for admissions, or any other matter where conferring with other

counsel may lead to simplification or limitation of issues. If there is a stipulated motion or need for an expedited ruling, this should be noted in the heading and the appropriate word, "stipulated", "unopposed", or "expedited" should be in bold.

(5) Trial Protocol.

(1) *Jury Instructions.* File in compliance with C.R.C.P. 16(d). (*See: Order for Preparation for Jury Trial which will be issued at or about the time of trial call.*) Computer disks ("Word" format on 3½" disks) shall be brought to Court.

(2) *Witnesses.* Each party shall subpoena all "will call" witnesses as identified in the Trial Management Order and shall not release "will call" witnesses from that subpoena without approval of the Court. By Thursday of the week prior to trial, two copies of a typewritten, alphabetized list of the correctly spelled names of all witnesses and any unusual or technical words they will be using during their testimony shall be provided to the Court. Each party shall also provide a written schedule of when each witness is expected to be called during the trial.

(3) *Exhibit Lists.* By Thursday prior to trial, you must file an index of all exhibits you expect to offer at trial.

(4) *Exhibits.* Exhibits should be labeled prior to trial. Plaintiff(s) using numbers and Defendant(s) using letters. Multiple parties should pre-allocate designations among themselves to avoid duplication. The original trial exhibits by each party shall be used by the witnesses and a copy of each party's shall be provided to the Court at the beginning of trial.

(5) *Exhibit Notebooks.* Trial exhibits from each party shall be placed into notebooks, one notebook for all witnesses and one for the Court, unless the exhibit is incapable of being placed into a notebook. All exhibits shall be tabbed with appropriate numbers or letters. Any exhibit which consists of multiple pages shall have each page numbered.

(6) *Objections* to exhibits, expert witnesses and designated testimony shall be provided pursuant to the Trial Management Order. Unless admissibility of exhibits is stipulated by the parties, the Rules of Evidence shall control such admissibility.

(7) *Expert Witnesses.* In trials to the Court, a written *curriculum vitae* (marked as an exhibit) will usually be sufficient foundation for qualification as an expert.

(8) *Deposition Testimony.* Any party who wishes to present deposition testimony at Trial shall follow the Trial Management Order and C.R.C.P. 32, and submit the required material by the Thursday prior to trial. Disputes as to the admissibility of portions of depositions or deposition video tapes shall be submitted to the court 10 days before the first day of trial.

(9) *Judicial Notice.* Each party shall provide a typewritten list of any facts of which a party is requesting that the Court take judicial notice.

(10) At trial, all parties, prospective jurors and witnesses shall be addressed as "Mr.", "Mrs", "Ms.", "Dr.", etc., unless permission of the Court is granted for more informal references.

(11) *Large Exhibits.* Exhibits larger than 10" by 14" will not be retained by the Court after trial is completed. Copies or photographs of such exhibits are to be

prepared prior to trial to be substituted for such exhibits at the end of the trial.

(12) *Bills of Costs.* Bills of costs shall be filed pursuant to C.R.C.P. 121 §§ 1-15 and 1-22. A form of order shall be submitted as with other motions.

(6) Sanctions. Failure to comply with any rule of civil procedure, including C.R.C.P. 16 and 26, or any provision of this Order, may result in loss of trial date, striking of witnesses or exhibits or other appropriate sanctions.

BY THE COURT:

/s/ Gerald J. Rafferty — 1 - 5 - 2000

JUDGE — DATE

APPENDIX 2

COLORADO COURT OF APPEALS

Court of Appeals No. 00CA0642
Arapahoe County District Court No. 99CV0391
Honorable Timothy L. Fasing, Judge

Dan Barnett,

Plaintiff-Appellant and Cross-Appellee,

v.

Denver Publishing Company, Inc., d/b/a Denver Rocky Mountain News,

Defendant-Appellee and Cross-Appellant.

JUDGMENT AFFIRMED, ORDER REVERSED, AND CAUSE REMANDED WITH DIRECTIONS

Division V
Opinion by JUDGE TAUBMAN
Rothenberg and Roy, JJ., concur

App. 42
April 26, 2001

Dan Barnett, Pro Se

Baker & Hostetler LLP, Marc D. Flink, Denver, Colorado, for Defendant-Appellee and Cross-Appellant

Plaintiff, Dan Barnett, appeals the dismissal of his defamation complaint against defendant Denver Publishing Company, Inc., d/b/a Denver Rocky Mountain News (Rocky Mountain News). The Rocky Mountain News cross-appeals the trial court's denial of attorney fees. We affirm the judgment of dismissal, reverse the order rejecting the Rocky Mountain News' request for attorney fees, and remand for an award of those fees.

In 1998, Barnett ran for the Republican Party nomination for state representative in District 37. On May 2, 1998, the Republican Party in Arapahoe County held its county assembly to nominate candidates for various offices. The next day, the Rocky Mountain News published an article about the assembly, which stated in pertinent part: "The District 37 race is to

replace Rep. Martha Kreutz, who is seeking the GOP nomination in the 6th Congressional District . . . . Five candidates initially sought the District 37 nomination. But Dan Barnett, convicted in a stalking incident involving one of Kreutz's daughters, failed to show up."

In 1995, Barnett had pled guilty to harassment, a class three misdemeanor, under Colo. Sess. Laws 1994, ch. 324, §18-9-111 at 2018. The plea resulted from an incident in which one of Kreutz's daughters was the victim, and the plea court had described the case as "almost stalking."

Based upon this article, Barnett filed a defamation complaint against the Rocky Mountain News on January 29, 1999. Two weeks later, the Rocky Mountain News filed a C.R.C.P. 12(b)(5) motion to dismiss for failure to state a claim upon which relief can

be granted. Barnett filed a motion for summary judgment on February 16, 1999.

The trial court granted the Rocky Mountain News' motion to dismiss, but denied its request for attorney fees. The court also denied Barnett's motion for summary judgment.

I. Motion to Dismiss

Barnett contends that the trial court erred in granting the Rocky Mountain News' motion to dismiss. Specifically, he contends that the article was defamatory because it used the word "stalking," which in his view implies that he was convicted of felony stalking, rather than misdemeanor harassment, the charge of which he was convicted. We disagree.

Motions to dismiss for failure to state a claim are viewed with disfavor and should be granted only if it

clearly appears that the plaintiff would not be entitled to any relief under the facts pled in the complaint. Hill v. Behrmann, 911 P.2d 679 (Colo. App. 1995), aff'd sub nom. Left Hand Ditch Co. v. Hill, 933 P.2d 1 (Colo. 1997).

A motion to dismiss for failure to state a claim must be decided solely on the basis of the allegations pled in the complaint, and the court must consider all allegations in the complaint in the light most favorable to the plaintiff. National Camera, Inc. v. Sanchez, 832 P.2d 960 (Colo. App. 1991). Appellate review of a motion to dismiss is de novo, and the court must accept all facts pled in the complaint as true. Fluid Technology, Inc. v. CVJ Axles, Inc., 964 P.2d 614 (Colo. App. 1998).

Because the threat of protracted litigation could have a chilling effect upon constitutionally protected rights of free speech, prompt resolution of defamation actions, by summary judgment or motion to dismiss, is appropriate. See Lockett v. Garrett, 1 P.3d 206 (Colo. App. 1999) (summary judgment).

The common law tort of defamation only requires a plaintiff to prove the defendant's publication of a defamatory statement by a preponderance of the evidence. The defendant then may prove substantial truth as an affirmative defense. However, if a public figure is involved, a heightened burden applies, and the plaintiff is required to prove the article's falsity by clear and convincing evidence. Smiley's Too, Inc. v. Denver Post Corp., 935 P.2d 39 (Colo. App. 1996).

This heightened burden requires a plaintiff to demonstrate that the statement was made with actual malice, that is, with knowledge that it was also or with reckless disregard of whether it was true or false. Lockett v. Garrett, supra. Actual malice can be show if the author entertained serious doubts as to the truth of the statement or acted with a high degree of awareness of its probable falsity. Lewis v. McGraw-Hill Broadcasting Co., 832 P.2d 1118 (Colo. App. 1992).

Allegations of defamation of political candidates and public officials must be considered against the backdrop of a "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." Lane v. Arkansas Valley Publishing Co., 675 P.2d 747, 750 (Colo. App. 1983) (quoting New York Times Co. v. Sullivan, 376

U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964)). Whether the evidence in a defamation case is sufficient to support a finding of actual malice is a question of law. Lockett v. Garrett, supra.

Here, when the article was published, Barnett was a public figure because he was running for the Republican nomination for state representative. See Monitor Patriot Co. v. Roy, 401 U.S. 265, 91 S.Ct. 621, 28 L.Ed.2d 35 (1971) (candidate for elective public office is a public figure).

Contrary to the Rocky Mountain News' contention, Barnett adequately alleged in his complaint that it acted with actual malice. However, even assuming that all of the facts pled are true, his claim must fall under the doctrine of substantial truth.

Truth is an absolute defense to a defamation claim brought against a public figure, and only false statements made with "actual malice" are subject to sanctions. People v. Ryan, 806 P.2d 935 (Colo. 1991). A party asserting truth as a defense in a defamation action is not required to justify every word of the alleged defamatory matter. It is sufficient if "the substance, the gist, the sting, of the matter is true." Gomba v. McLaughlin, 180 Colo. 232, 236, 504 P.2d 337, 339 (1972).

Here, the statement that Barnett had been "convicted in a stalking incident" was substantially true. Barnett alleged in his complaint that the "judge upon sentencing in 1995 in front of 3 attorneys and a court reporter [stated] that he had never seen love like this before and that it was Almost Stalking."

Barnett asserts that the Rocky Mountain News' article was defamatory because stalking is only punishable as a felony. He is mistaken. In 1995, when he pled guilty to misdemeanor harassment, stalking was a class 1 misdemeanor. See Colo. Sess. Laws 1995, ch. 240, §18-9-111 at 1258. Although there is a distinction between harassment, which is a misdemeanor, and stalking, which is now a felony, both terms describe similar repeated, unsolicited behavior.

Barnett also contends that the article mistakenly suggested he was convicted of felony stalking. We disagree, and note that the article never used the word "felony" or asserted that his conviction was for a felony charge.

Courts in other jurisdictions have held that technical errors in legal terminology and reports

involving violation of the law are of no legal consequence. See Simonsen v. United Press International, Inc., 654 F.2d 478 (7th Cir. 1981) (article reporting person charged with rape, when actually charged with second degree sexual assault, not defamatory, because statement was not made false by substituting a word in common usage for exact legalism); Read v. Phoenix Newspapers, Inc., 819 P.2d 939 (Ariz. 1991) (newspaper article describing a defendant's conviction for "firing a gun," when he was actually convicted of "exhibiting the gun," was not defamatory, because the inaccurate statement did not cause him any more damage than that which resulted form his actual conviction and sentence).

Accordingly, although Barnett was convicted of harassment, not stalking, we conclude that the Rocky

Mountain News' use of the term "stalking" to describe his conviction was substantially true, and his defamation claim was properly dismissed.

Barnett further claims that because the article failed to state the date of his conviction, readers were led to believe that he was absent from the assembly because he was in jail. The article made no such claim. Rather, it indicated that Barnett could have attended, but he "failed to show up."

Because we conclude that the article was not defamatory, we also reject Barnett's request for an injunction ordering the Rocky Mountain News to remove the article from its internet archives.

II. Summary Judgment

We do not address Barnett's contention that the trial court erred in denying his motion for summary judgment, because a denial of summary judgment is not an appealable order. Feiger, Collison & Killmer v. Jones, 926 P.2d 1244 (Colo. 1996).

III. Attorney Fees

On cross-appeal, the Rocky Mountain News contends that the trial court erred by rejecting its claim for attorney fees. We agree.

Section 13-17-201, C.R.S. 2000, provides: "In all actions brought as a result of . . . an injury to person or property occasioned by the tort of any other person, where any such action is dismissed on motion of the defendant prior to trial under rule 12(b) of the Colorado rules of civil procedure, such defendant shall have judgment for his reasonable attorney fees in defending

the action." Under this section, an award of attorney fees is mandatory when a trial court dismisses an action under C.R.C.P. 12(b). Houdek v. Mobil Oil Corp., 879 P.2d 417 (Colo. App. 1994).

Defamation is "an injury to person or property occasioned by the tort of any other person." See Brooks v. Jackson, 813 P.2d 847 (Colo. App. 1991).

The trial court rejected the Rocky Mountain News' request for attorney fees without explanation. However, because we have concluded that the trial court properly dismissed Barnett's claim under C.R.C.P. 12(b)(5), it was required to reward attorney fees to the Rocky Mountain News. Furthermore, the Rocky Mountain News is entitled to reasonable attorneys fees for defending this appeal. See Henderson v. Bear, 968 P.2d 144 (Colo. App. 1998).

The judgment dismissing Barnett's claim is affirmed, the order rejecting the Rocky Mountain News' claim for reasonable attorney fees is reversed, and the cause is remanded for a determination of the amount of such fees.

JUDGE ROTHENBERG and JUDGE ROY concur.

Appendix 3

COLORADO COURT OF APPEALS August 16, 2001
No. 00CA642
ORDER DENYING PETITION FOR REHEARING

Appeal from the ARAPAHOE COUNTY
Honorable TIMOTHY L FASING, Judge
No. 99CV391

The PETITION FOR REHEARING filed in this appeal by:

DAN BARNETT /PLAINTIFF-APPELLANT

is DENIED.

Issuance of the Mandate is stayed until: September 17, 2001

If a Petition for Certiorari is timely filed with the Supreme Court of Colorado, then the stay shall remain in effect until disposition of the cause by that Court.

By the Court:

TAUBMAN, J.
ROTHENBERG, J.
ROY, J.

[Court Stamp]
COPIES MAILED TO

COUNSEL OF RECORD
AND Pro Se
ON 8 - 16-01
BY /s/ [initials]
COLORADO COURT OF
APPEALS

Appendix 4

C.R.S. Rule 44 Page 1571 In a review involving the Constitutionality of any Colorado statute in which neither the state, nor any state agency, nor any representative, the party raising such question does hereby give notice writing to the Supreme Court of the existence of the question. The clerk must therefore fulfill the duty and shall thereupon certify such fact to the attorney general, as te Court of Appeals is attempting to allow two separations + (a sentence enhancer) of crime as being equal as never before in the history of the United States of America has never legally been successfully applied by a libeler with existing laws of even one classification of crime difference for that matter. Attorney General Ken Salazar (303) 866-4500. Colorado State Capitol 200 East Colfax Denver, CO. 80203-1784.

Appendix 5

United Nations Universal Declaration of Human Rights.

Article 2. No one shall be held guilty of any penal offense which did not constitute a penal offense nor shall a heavier penalty be imposed offense than the one that was applicable at the time the penal offense was committed. **U.S. Constitution Amendment XIV (1868) Section 1.** No State shall make or enforce any law which shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person the equal protection under the laws. A person cannot be convicted of a crime he was never charged with. **U.S. Constitution Amendment VI** (1791) In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously

ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

CERTIFICATE OF SERVICE

On a need to know basis in the legal and financial interest of the State of Colorado because of a basic human rights violation a copy has been sent by U.S. Postal Service to:

It is the Petitioner's belief the most honorable Governor of Colorado as an expert witness and the highest legal authority will not agree with the ruling of the Court of Appeals and has been given a copy. (303) 866-2461 or direct office access (303) 866-6326, as well as: Amnesty International (866)-273-4466, 9000 W. Washington Blvd. Second Floor, Culver City, Ca. 90232; the United Nations (212) 867-8878, 777 UN Plaza N.Y., N.Y., 10017; Every Colorado State Representative and

Senator; And to the addresses of record of all Colorado Congress and Senators; United States Attorney for Colorado John Suthers (303) 454-0100 1225 17th St. Suite 700 Denver, CO 80202; and State Treasurer Mike Coffman at the State Capitol.

I CERTIFY that I have on this 12th day of September, 2001, given a copy for the Denver Sheriff to serve to the attorneys on record for the Defense with a timely Proof of Service delivered to the court when it is returned by mail and have given an original and ten (10) copies of the PETITION FOR CERTIORARI with all attachments to:

CLERK, COLORADO SUPREME COURT
COLORADO JUDICIAL BUILDING
2 EAST 14TH AVENUE, 4TH FLOOR
DENVER, CO 80203
(303) 837-3720

/s/ Dan Barnett
Dan Barnett
Pro Se
6565 S. Syracuse Way, #404
Englewood CO 80111
(303) 796-9687

EXHIBIT 3

SUPREME COURT, STATE OF COLORADO

2 East 14th Avenue
Denver, CO 80203

On Certiorari to the Court of Appeals
Case of Appeals Case No. 00CA0642

DAN BARNETT,

Petitioner,

v.

Respondent,

DENVER PUBLISHING COMPANY d/b/a ROCKY MOUNTAIN NEWS INC.

Case No.:

01SC620

Dan Barnett
6565 South Syracuse Way, Suite 404
Englewood, CO 80111
303 796-9687

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

May it please the court. The Petitioner has again won the case on the merits. The response was replete with contradictions, false facts, statements purposefully out of context, and with many arguments that belong in the lower courts as previously debated.

The Respondent entirely failed to prove why the Supreme Court should not take appropriate actions. The Respondent still has failed to prove opposite of what the Court of Appeals states was a matter of fact. The Respondent still ignores that it has already been established as a fact by the Court of Appeals (Opinion Page 6, Last Paragraph) and continues to try and spin the information to splatter the Petitioner as being such a bad person that right and wrong do not matter and close enough counts. All crimes of Colorado Criminal Code should be equal with the logic of the Respondent. The

Respondent needs to be reminded that the Petitioner is not on trial here. That is reserved for Criminal cases. The Defendant is the "one out of the law" and on trial for their behavior, and that point will be proven in front of the jury. The Petitioner has never been charged with the crime the Court of Appeals declares as a matter of fact. If the Respondent has a problem with that then they should have filed a Cross-Petition for Certiorari debating this established fact. They are fighting the wrong entity. On (Page 7, Line 12 of the Opposition To Petition For Writ of Certiorari), the Respondent agrees with the Statute on May 10, 1995. That confirms that the Defense has admitted the cognition of fact that the Statute is uncontested as the legislature wrote it. It is very clear. The Petitioner has never been charged with the crime factually identified in the article. There is no

First Amendment relevant issues for the Respondent, but only for the Petitioner. Here as the press was allowed to write any way they see fit as long as they do not make it a worse crime by fact. As far as the hearsay, the Defense should have known how horrible rumors can be by other voting political persons. With transitive reasoning, the Petitioner remembers one Colorado candidate in 1998 being called a Murderer for voting his conscience on the right to abort a pregnancy. Common sense would call for the reporter to look for a Murder conviction before writing it as a matter of fact. This analogy is no different from the case being plead today. The Defendant either knew the information was probably not true and wrote it with personal political motives or never bothered to check anywhere. ***Anywhere*** the Defendant checked would have shown

properly filed convictions, and not the worse one concocted by the Respondent.

There never has been an issue of "privilege" as the Defense's exhibit was never looked at prior to writing the article, or in the alternative, was properly labeled so that even a child could not think that it was anything but exactly what the law is by Colorado State Statute, a third degree misdemeanor. The Defendant's accusation has been proven and established by the Court of Appeals to be factually false. What the Respondent actually shows with purported evidence was the lowest form of misdemeanor conviction in the State of Colorado. It was unfortunate the defendant violated probation in that case and was late for his first probation meeting. The law is something not to be messed with. But, it never even closely matches what the Respondent

says it is by the Statute. There is a huge difference. The Petitioner is just asking for what is legal and fair. If the Supreme Court agrees with the Respondent, then all of the Colorado Criminal Code must be rewritten so that all crimes are equal regardless of level, skipping right over one and two level of difference and starting at two levels of difference plus a sentence enhancer.

In regards to the **Questions Presented For Review by the Petitioner (A Through F)**, the Respondent did not respond correctly to questions presented for review and went out on a tangent into previously irrelevant arguments to try and build up a purely emotionally based strategy. From the questions presented for review, and after reviewing the Respondent's assertions, the following should now be considered fact.

A. A jury trial is a Constitutional right. ***Article 2, Section 10*** for Libel defamation. The reason this clause was created by its framers was to create a safety net precisely for cases like this. The only discussion ever in regards to this by the Defendant is regarding pre-trial witnesses testimony where the Defendant requested to Depose the witnesses but this was not granted by the District Court, as not Required at that early of a time by Case Management rules and by this action was in a sense requesting the right to a jury trial to fend off the Motion for Summary Judgment of the Plaintiff. A jury trial is not for the Defense only. That would not be fair if it were a law, but it is not for good reason. Case Management rules are for both sides.

B. The crime the Defense would like to show to hep defend their position is much less than the accusation in

accordance to Colorado Criminal Code. Injunction relief was mandatory. To not issue an Injunction would let stand a *sui generis* ruling and the Supreme Court has duty, possessing neither the sword nor the purse to sustain public confidence in moral sanctions. ***Eighth Amendment.*** Not allowing for a Injunction would be cruel and unusual as shown to be legally false. It would shock the conscience of the voting citizens if our land's Constitution was not followed and if our society began to regress toward totalitarianism, and away from our fabric of Democracy with our basic charter of liberties in the ***Bill of Rights*** and its penumbras. The statement in question on the Internet enjoined with the scrutiny of being a public official as the Petitioner is today, would allow this legally unequal accusation that now is a trickling stream to become a raging torrent with the

advancement of technology. The Petitioner faces a clear and present danger as a matter of fact and will be unfairly stigmatized with lasting significance. The Respondent has jeopardized the reputation of the Petitioner by refusing to change the legally false fact, and has diluted the truth. A wrong can still be righted by this giant newspaper.

C. The laws from two other States were misapplied by both the Court of Appeals and the Respondent as equal levels as is different here as classified as a minimum two levels of difference + (a sentence enhancer for being an extraordinary risk of violent harm to society).

D. The Respondent did not object in any way to a change of venue.

E. The Respondent did not refute that the Constitution in regards to due process was violated and apparently,

also the Respondent does not know why the Court of Appeals did not address this issue. As the briefs in the trial court were written with the knowledge of who was the judge and then switched without knowledge or consent of the Plaintiff, created an unsolvable riddle of the ***Due Process Clause*** of the ***Fourteenth Amendment of the United States***.

F. The Respondent still fails to see that there is no "privilege" when it comes to Per Se convictions as recklessness was already established according to the Court of Appeals Statements that are not accurate or fair are not "privileged". The substantial truth doctrine shows that these arguments are substantially false. It was not a legally accurate summary. It is legally incongruent. There is a substantial difference that produced substantially greater "sting". The Plaintiff has

not made any flaws large enough in the Complaint or in the briefs in the trial court not to win the entire case. In regards to the Respondents last sentence of their brief, "issues not raised in trial court will not be considered upon appeal." That's great because the Plaintiff has already won prima facie before we get to trial on that set of encapsulated briefs alone. The Defense knows if this goes to trial they have absolutely zero chance to prevail and for that reason has fought so vigorously on court procedures and have tried every way possible to get this case thrown out on anything besides the facts of law.

1. Most of the arguments presented by the Respondent were previously presented in lower courts but have nothing to do with the direct relation to the issues presented for review. The Respondent does not request the Supreme Court to review the Statute as to its

legality. It was very clear. All the Petitioner is requesting is for the Supreme Court to apply existing law.

2. As far as mental health of the Petitioner since the Respondent brings it up, is how it has always been. Perfect. Mentally fit for any endeavor.

3. Respondent believes that the Petitioner is upset about law application in 1995. The Respondent writes in the footnote on the bottom of (page 5), Mr. Barnett remains in denial of the seriousness of his conduct." "Mr. Barnett attributes his conviction to the District Court Judge's failure to apply the law." These statements by Respondent make no sense whatsoever. This is not a criminal case but a civil case as these two statements have absolutely nothing to with the degree of guilt of the Denver Publishing Company d/b/a Denver

Rocky Mountain News. The Respondent is trying to blend in emotional and irrelevant information into this case for sympathetic acceptance by the Supreme Court. The Supreme Court is not to be swayed by emotion, but by fact and law. There is no animosity towards those persons mentioned, by the Petitioner. That is totally unrelated and bizarre as an argument. If that was the case the Petitioner would have started proceedings in that direction and the Respondent would have never been served. What is upsetting to the Petitioner though, is being convicted in the media by a lynchmob of reporter, editors, and defense attorneys for the newspaper, bypassing criminal court procedures. This is the United States of America and we have a civil ***Bill of Rights*** **(1 Will. And M. (1689), the *United States***

***Universal Declaration of Human Rights*, Article 2, the *U.S. Constitutional Amendment I*, the *U.S. Constitution Amendment XIV* (1868) Section 1, the *U.S. Constitution Amendment VI* (1791), the *U.S. Constitution Amendment VIII*, the common laws of the *Magna Carta* and the *Petition of Rights* (3) Car. (1628).** This civil case also serves as a brethren mirror for ***Habeas Corpus* (31 Car. 2 (1679), and Miranda.** All of these sources back up the Petitioner alone. There is no hiding th filthy hands of the Defendant. Very simply, the Defendant is guilty of Civil Libel. There are no other Defendant's, nor should there be.

4. As far as the Respondent's repetitive dragging all kinds of mud from a properly labeled and dated third degree misdemeanor file, it is different from what the Respondent would like it to be, a first degree plus a

sentence enhancer for being an extraordinary harm to society with repeated violent threats. It should be noted that almost half of the physical paper of the Opposition to the Petition For Writ of Certiorari is formed by nothing more than the invidious footnotes that are irrelevant to this civil case, and irrelevant to the Respondent's guilt. The Petitioner extends to the Supreme Court the opportunity to strike any comments that do not advance the facts from any and all briefs. The Petitioner is above the pettiness and does not want to get into name calling where such squabbles have no place in the seriousness of the Colorado Supreme Court, where Constitutional issues are the agenda. The Plaintiff's juvenile passion there burned out years and years ago. The Petitioner would like it noted the Respondent has entered enough information to have

drawn a perfectly legal description without trampling on the Constitutional rights of the Petitioner. The Petitioner is not treading on the ***First Amendment*** rights of the Respondent as they can rewrite fairly and legally. It can be full and robust for wide open debate as long as it is factually and legally true. The Respondent could use their own briefs to rewrite the Internet statement in a legal way, or in other words, what should have happened the day the statement was written in 1998. The Respondent is illogical and incorrect. At (Roman numeral IV, first sentence) of the Respondent's brief, "Mr. Barnett's Notice of Appeal requested that the Court of Appeals expedite the appeal and enjoin the News from maintaining the article on the Internet." The Petitioner has never "asked" for the Court of Appeals to "enjoin" the News as a Defendant. The Petitioner has

not enjoined the State of Colorado for failing to issue an Injunction yet because it is the belief that the Supreme Court will do the right thing and follow the Constitution and remove the conviction from the Internet because it has been shown to be factually false and with the hope that the Supreme Court is egalitarian. The Petitioner has no plans to sue anyone else besides the Defendant as they are solely responsible for the damages. It should be clear, the only current problem of the Petitioner is the current Respondent. The Petitioner has never sued anyone else in regards to the recklessness of the Respondent. If the Respondent feels they have been wronged by Colorado State Statute, or perhaps the Court of Appeals itself for declaring facts and recklessness establishments, or has been led astray by voting political gossips, they have the right to try and make those

entities change their behavior. They have not done so. It is quite obvious though the human error was alone on the part of the large newspaper, the "Denver Publishing Company", as they acted recklessly.

5. Per Se criminal convictions are actionable and "privilege" does not triumph over recklessness. A "privileged" defense would perhaps work with a falsely labeled file or an incorrect computer system error with the Colorado Bureau of Investigations, or perhaps even an equal crime file, but not in this case. From the Defendant's non-factual "so-called" evidence the date was shown (8) times, the Statute (3) times, and the level of crime more than (6) times. The Petitioner poses the question of why was this date, and this crime not used in the article if that is the Defense's strategy? The Statute is clear to the Respondent (Page 7, Line 12 of the

Opposition to the Writ of Certiorari.) The line on tarnished evidence, dug up by the Respondent's attorneys *ex post facto* has been burned with a laser beam on this different classification of file. Common sense would say **"no"** to the Defendant. The logic of the Respondent is tainted. On (Page 10, fourth line from the bottom) the Respondent states "So long as they convey the substance of the allegations made in court, it does not matter that the statements concerning Mr. Barnett were made by a personal and political enemy". It would not be O.K. to shout the statement from the article at a political gathering as it would not be true. The newspaper statement was not fair nor accurate by law. The fair reporting privilege does not apply to statements made by a third party if they are legally false. Recklessness was successfully established and is a

question for the jury. "Privilege" only is for correctly interchangeable wording as is legally impossible here today, or perhaps just plain error of other Government entities never before argued by the Defense. The Defense has never shown a legal source of the crime as they wrote it, because there isn't one. There was no computer glitch. The Respondent still has not sued ay agency to change file labels or computer systems because the papers the Respondent refers to are not evidence of the accused crime. It is legally and factually different and they would not have a right to sue to make such a change to what the Respondent would like to see as a fact. This means that when the Injunction is granted it will have lasting significance. For the Defense to have what they want there would have been criminal proceedings on at least a first degree crime change with

such a defendant having the such proper rights to contest such accusations. **The Respondent has never shown such proceedings because there never have been any.** Apparently some attorneys get paid to argue the color white is really black and day is actually night. The false statement was very hurtful and caused the Petitioner to be shunned. The Petitioner is in present and immediate need of relief as a public figure and also just as an ordinary citizen from the defamatory statement. Until the Injunction is issued to comply with the laws of Colorado, the Petitioner has no legal financial liability. It is legally not correct. As it presently stands this ruling leaves the Constitution in shambles. The Respondent, in the footnote (Page 2, of the Opposition To Petition For Writ Of Certiorari) stated with case law that "as a matter of Constitutional law that a change of criminal conduct,

no matter how remote in time or place, can never be irrelevant". This statement shows that since the Constitution of Colorado has been violated the Supreme Court has no choice other than to take action and issue the Inunction. The community has a right to know the legal, and factual truth. ***1st Amendment of the U.S. Constitution.***

6. The Petition has won the right to an Injunction and if the Defense loses with a jury in this Libel case after the Injunction is issued, as it presently stands in the trial court, (or as reordered to argue altogether because due process was annulled unconstitutionally), in regards to recklessness, they must pay fair and square as would the Plaintiff if he lost at trial. Mr. Barnett can and will hold the Respondent accountable for their behavior and will easily prevail on the merits of the claim. By law

they are liable. Law and logic prevail over spin doctoring and electioneering, and any jury member would easily agree with facts of the Constitution. It would be hard to find reason for any jury member not to qualify as all we are dealing with are established facts and the laws of Colorado.

7. **The Court of Appeals correctly established the facts (Opinion Page 6, last paragraph.) Which entirely nullified the entire labeled argument (Starting Page 6: I, III, IV, and V) of the Respondent.** The Respondent is still in unshakable denial of this fact. They are also denying that reckless behavior has been acknowledged by the Court of Appeals as evident for trial. Contrary to the Respondent's beliefs, it was not accurate as shown in pleadings here, and as witnesses

will testify to being much worse by fact and defamatory. This relegates the Respondent with no argument at all, and no logic, and only, leaves **(IV)** of the Respondent's Opposition to Petition For Writ Of Certiorari, with regards to early disposition of defamation claims which the Petitioner agrees with. That is the law. But those laws are a two way street. The Petitioner though has waited three and one half years for justice, but can wait as long as it takes for justice to be served and the docket to clear, as appropriate, of other more immediate issues of public importance by severity of Constitutional crisis such as Congressional redistricting.

8. The Supreme Court should take all necessary steps to correct this unfinished and very large quagmire. As this case was previously set by telephone for trial it should be noted the Respondent was the one to chose the

last possible trial date and the Petitioner requests the Supreme Court to assign, or order the first trial date available as expeditiously as possible so that the Petitioner can again run for office or public leadership positions in his community immediately without being incorrectly labeled of a crime conviction never charged with nor committed, and also just because it is the right thing to do. The Petitioner is a person will feelings just like everyone else. Furthermore, as aggravating proof, it is not legally possible for *anyone* (apart from intuition by osmosis as the Respondent would like the Supreme Court to believe in), to factually know what the article refers to and therefore, *no person* can **not** be sure that it was **not** a felony conviction because there is no element of date in the article with witnesses to testify. Evidence

to date has shown no evidence to refute this. The Defendant should have been careful, and not reckless.

9. A citizen cannot be convicted of a crime he has never been charged with nor convicted ***U.S. Constitution Amendment VI*** and is by law actionable per se. The Respondent has no factual basis and apparently wants the Petitioner to endure additional punishment by not offering to remove what was shown to be legally false and has decided to also take up the job of a renegade, vigilante prosecutor outside of Criminal court and the laws of Colorado. The Respondent is trying to confuse the courts to go above the law and beyond what the Colorado Constitution allows, for additional public punishment by leaving the statement on the Internet, with any means possible legal or otherwise until the Petitioner forces their behavior to

change. The Defense attorney attitude of "Win at all cost, we don't care if it is wrong and hurts the reputation of the Petitioner" makes no sense at all and is most likely the same of the Editors and the Reporter. Just because the Respondent is also a legal giant does not give them the right to spin the law. If the Respondent requests the laws to change for Libel and Criminal Code, then they should petition the legislature to create such new "special" laws for them. Not one Defense case cited can withstand the burden placed upon the Respondent. If the Supreme Court does choose Declaratory relief for the Petitioner under the current set of facts, please also consider that the Defense at one point argued in the trial court briefs that the newspaper was a medium size paper by circulation. With the failure to remove the statement the Defendant has exacerbated

the problem by more than doubling the circulation with the Sunday edition, so that statement of medium size should now be expunged as a mitigating factor consideration. The Injunction is mandatory. I don't know one person who would want an untrue, disgusting, and legally false statement about them to remain on the Internet. The time has come for the Respondent to accept responsibility for their reckless behavior, and remove the statement. The Petitioner has been **guaranteed** this Injunction by the ***extraordinary*** Bill of Rights.

GUARANTEED.

The Inunction fits neatly into the conventional mosaic of constitutional guarantees superseding all others for the right to liberty and equal protection as no public servant shall have the right to morally sway from our Federal

Constitution. The Court of Appeals left this case profoundly unsettled as this case will stand for liberty and justice and as a symbolic landmark for others wrongly accused in the future, and to help defend freedom from tyranny and oppression. There is no greater summons of the government than the Constitutional commandment to protect against the power to take away a person's liberty.

Otherwise, the Petitioner would have no way to refute something legally incorrect. Let the Supreme Court be the arbiter. Respectfully submitted.

Dan Barnett

/s/ Dan Barnett

Certificate of Service

I CERTIFY that I have on this 1st day of October, 2001, I have given a copy for the Denver Sheriff to serve to the attorneys on record for the Defense with a timely Proof of Service delivered to the court when it is returned by mail and have given an original and ten (10) copies of the REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI with all attachments to:

CLERK, COLORADO SUPREME COURT
COLORADO JUDICIAL BUILDING
2 EAST 14TH AVENUE, 4TH FLOOR
DENVER, CO 80203
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